

Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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Federal Communications Commission
Office of Secretary

In the Matter of:

Implementation of the Local
Competition Provisions of the
Telecommunications Act of 1996

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CC Docket No. 96-98

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**CONSOLIDATED REPLY TO COMMENTS AND OPPOSITIONS TO
SELECTED PETITIONS FOR RECONSIDERATION**

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TABLE OF CONTENTS

	<u>Page</u>
SUMMARY	ii
I. INTRODUCTION	2
II. THE COMMISSION SHOULD REQUIRE THAT PERMANENT NUMBER PORTABILITY BE IN PLACE PRIOR TO THE IMPLEMENTATION OF AN NPA OVERLAY PLAN	3
III. THE ONE-NXX CODE DISTRIBUTION REQUIREMENT SHOULD BE REVISED IN ORDER TO MITIGATE THE NONDISCRIMINATORY NATURE OF OVERLAY PLANS	7
A. The Issuance of One NXX Code Which Is Tied to A Single Rate Center Does Not Address the Anticompetitive Effects of Overlay Plans	7
B. The One NXX Code Assignment Requirement Should Not Be Eliminated, Even If the Commission Declines to Reconsider This Condition	10
IV. THE COMMISSION SHOULD RETAIN THE MANDATORY 10-DIGIT DIALING REQUIREMENT IN THE EVENT OF AN OVERLAY PLAN	11
V. CODE ASSIGNMENT FEES SHOULD BE BASED ON THE COSTS THAT WOULD BE INCURRED BY A THIRD PARTY NEUTRAL ADMINISTRATOR	12
VI. COMMENTERS UNIFORMLY AGREE THAT NONDISCRIMINATORY ACCESS MEANS ACCESS THAT IS AT LEAST EQUAL TO WHAT IS PROVIDED BY THE LEC TO ITSELF OR ITS AFFILIATES	13
VII. CONCLUSION	15

SUMMARY

Teleport Communications Group Inc. ("TCG") requests that the Commission preserve those conditions that help mitigate the anticompetitive effects of overlay plans. The Commission also should revise or adopt additional safeguards so that a CLEC is not competitively disadvantaged in the event that an overlay plan is adopted for a CLEC's service area. Specifically, the Commission should adopt TCG's petition to require permanent number portability as a condition for the implementation of an overlay relief plan. TCG and other CLECs have shown that interim number portability arrangements would place CLECs at a competitive disadvantage. Mandatory 10-digit dialing and the assignment of NXX codes from the existing NPA, by themselves, do not adequately address the anticompetitive effects of overlay relief plans, in the absence of permanent number portability.

In fact, the one-NXX code assignment condition does not satisfy the Commission's stated intent to reduce the anticompetitive effects of an area code overlay plan. A CLEC should be issued sufficient NXXs from the existing NPA to serve its entire service territory. If this condition is not revised, then it should at least be retained in conjunction with the adoption of a code conservation plan so that an NXX from the existing area code could be spread across rate centers within a CLEC's service area. In addition, mandatory 10-digit dialing should be retained to address the anticompetitive effects of overlay plans.

The Commission also should adopt AT&T's proposal that code assignment fees charged by an ILEC for NXX assignments must be limited to the forward-

looking, economically efficient costs of numbering administration, to the extent that there are any. This standard would prevent ILECs from passing on to CLECs those costs that would not be incurred by a neutral numbering administrator. Finally, the Commission should reject Ameritech's petition regarding the Commission's interpretation of nondiscriminatory access to telephone numbers, operator services, directory assistance and directory listings. New entrants must have access to these services on the same basis as the ILEC and its affiliates.

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**CONSOLIDATED REPLY TO COMMENTS AND OPPOSITIONS TO
SELECTED PETITIONS FOR RECONSIDERATION**

Teleport Communications Group Inc. ("TCG") hereby submits its consolidated reply to comments and oppositions to selected petitions for reconsideration of the Local Competition Order issued in the above-captioned proceeding.¹ TCG has petitioned for changes to the Second Report and Order that would help mitigate the inherent anticompetitive effects of overlay relief plans, which would be contrary to the pro-competitive goals of the Telecommunications Act of 1996 ("1996 Act").² In addition, TCG has opposed the petitions of those parties that, if adopted, would impede the efforts of new entrants to provide competitive local exchange service.

¹ Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Second Report and Order and Memorandum Opinion and Order, FCC 96-333, (rel. August 8, 1996) petition for review pending sub nom., Iowa Util. Board et al. v. FCC, No. 96-3321 and consolidated cases (8th Cir.) ("Second Report and Order").

² Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56.

I. INTRODUCTION

The determination of each issue raised and discussed in response to petitions for reconsideration of the Second Report and Order will affect the capability of new entrants to provide competitive local exchange service. TCG has requested that the Commission reconsider two findings with respect to the implementation of overlay plans. First, permanent number portability should be a prerequisite to the adoption of an overlay plan. Second, the proposal to provide one NXX block from the existing NPA to each eligible carrier must be revised to provide real relief to competitive carriers. In the absence of either measure, overlay plans deny CLECs the ability to provide competitive service to customers by denying them nondiscriminatory access to numbers in the existing and favorable NPA.

TCG also opposes the petitions that request that the Commission rescind the requirement for 10-digit dialing prior to the implementation of all-services overlay plans. Mandatory 10-digit dialing will ensure that the customers of ILECs experience similar dialing patterns. In this regard, CLECs must also be assured nondiscriminatory access to numbering resources, as required by section 251(b)(3) of the 1996 Act. In many cases, for such access to qualify as "nondiscriminatory," it must be equal to that which a LEC provides for itself or its affiliates. Finally, to the extent that CLECs are required to contribute to the costs for NXX code assignments, these contributions must be based on the costs that would be incurred by a neutral code administrator.

II. THE COMMISSION SHOULD REQUIRE THAT PERMANENT NUMBER PORTABILITY BE IN PLACE PRIOR TO THE IMPLEMENTATION OF AN NPA OVERLAY PLAN

In its Petition for Reconsideration, TCG requested that the Commission reconsider its decision not to impose permanent number portability as a precondition for the implementation of overlay relief plans.³ Interim number portability is an inferior device and places CLECs at a competitive disadvantage, especially during the nascent stage of competition.⁴ A number of other competitive carriers concur with TCG's position. For example, MCI states that "[w]ithout permanent service provider local number portability, consumers would be reluctant to switch providers if they were assigned to a number on the NPA overlay. . . . Since the anticompetitive burdens created by overlays are especially great during the transition to a competitive market, they should not be implemented to relieve area code exhaust prior to implementation of permanent LNP."⁵

³ TCG Petition for Reconsideration at 8-12.

⁴ See NCTA at 6 (stating that because interim number portability may impair the "'quality, reliability, or convenience of telecommunications services when customers switch carriers[],'" . . . CLECs would still face substantial competitive disadvantages in overlay areas where interim number portability has been implemented, and these disadvantages would be aggravated by allowing dialing disparities in such areas") (quoting Number Portability Order at ¶ 110) (footnote omitted).

⁵ MCI at 8; see also NCTA at 1-2 ("When an overlay plan is introduced in a particular numbering plan area ("NPA"), incumbent carriers enjoy a competitive advantage over new entrants by virtue of their ability to control the vast majority of NXX codes associated with the "old, desirable" area code") (footnote omitted).

Contrary to the claims of some parties,⁶ the drawbacks of interim number portability have been explained repeatedly in this proceeding.⁷ The concerns of CLECs with respect to overlay plans cannot be addressed by interim number portability, which introduces inferior service quality factors like calling delays. Moreover, interim number portability solutions simply do not work for larger, multi-line business customers, and thus, competitors would be able to address effectively the needs of those customers. Because these concerns are fundamentally tied to the ability of CLECs to offer competitive service, it is impossible for CLECs to rely on assurances that in areas that are likely to reach a state of exhaust first, permanent number portability will be implemented more quickly.⁸ Instead of hoping that the number portability implementation schedule accurately predicts the areas where number exhaust will happen first and accordingly requires faster permanent LNP implementation, the Commission should require that permanent number portability be in place prior to the implementation of an overlay relief plan.

Because the other measures intended to address the anticompetitive effects of an overlay plan are insufficient by themselves — particularly the assignment of

⁶ See, e.g., Bell Atlantic NYNEX Mobile at 5; Pacific Telesis Group at 2 (stating that interim number portability allays any anticompetitive concern); see also PageNet at n.8 (claiming that the CLECs' primary interest in promoting splits "is that splits give them an increased opportunity to market their services").

⁷ See, e.g., TCG Petition for Reconsideration at 10-11; AT&T Opposition at 9; Cox Opposition at 5; MFS Opposition at 7-8.

⁸ See USTA at 3.

only one NXX from the existing NPA — only the requirement of permanent number portability can adequately address these concerns. According to Sprint, "the one NXX per NPA will enable CLECs to serve only a single rate center in the preferred, existing NPA, while the ILEC will be able to assign numbers from the existing NPA across the entire area. The competitive imbalances associated with such a situation are offset to a large degree if ILEC customers are able to port their numbers to the CLEC."⁹ Based on the ineffectiveness of the NXX assignment plan, NCTA also recommends that "[i]nstead of relying on half-measures to address the anticompetitive effects of overlays, the Commission should revise the Second Report and Order and permit overlays only in NPAs in which full number portability has been implemented."¹⁰ TCG agrees that permanent number portability is the optimum measure which, coupled with mandatory 10-digit dialing and a revised NXX assignment plan, will provide competitive safeguards for CLECs in the event of an overlay relief plan to the extent possible.

A number of parties object to permanent number portability as a prerequisite to a number overlay plan because it "effectively kill overlays as a solution to the many urgent area code exhaust situations now occurring."¹¹ This argument disregards the clear facts that careful number administration planning will help prevent future urgent exhaust situations and that geographic code splits are the

⁹ Sprint at 8.

¹⁰ NCTA at 3 (footnotes omitted).

¹¹ See Bell Atlantic NYNEX Mobile at 5; see also GTE at 13; USTA at 5; U S West at 11-12.

available and tested alternative in cases where the LNP requirement could not be met.¹² Overlays should not be viewed as a substitute for careful planning in number administration and as the ultimate replacement for geographic code splits.¹³ However, if the Commission does not require permanent number portability as a condition to the implementation of an overlay relief plan, it should at least clarify that a state independently may determine that permanent number portability must be implemented before an overlay relief plan may be adopted.

¹² TCG disagrees with CMRS providers who assume that a geographic code split necessarily disadvantages them by requiring their customers to turn in numbers from the existing area code that have been issued from a rate center to be changed to the new area code. See, e.g., Bell Atlantic NYNEX Mobile at 7-8; PageNet at 4. As TCG stated in another proceeding, permitting cellular customers and carriers to grandfather their existing NPA numbers does not conflict with the standards set forth in the Ameritech Order or the Second Report and Order. Petition for Declaratory Ruling Filed by Massachusetts Department of Public Utilities Regarding Area Code Relief Plan For Area Codes 508 and 617, NSD File No. 96-15, Comments of Teleport Communications Group Inc. (filed November 6, 1996) at 8.

¹³ In fact, NCTA questions the Commission's bases for allowing overlays at all. It states that although overlay code plans do not require customers to change existing area codes, if "the inconvenience associated with changing area codes is disproportionately borne by customers of new entrants[,] . . . the prospects for robust and expeditious competition will be dampened." Second, NCTA observes that the Commission raises concern that area code splits could eventually result in neighborhoods having different area codes, but this is precisely the result for overlay plans. Third, it notes that although the Commission claims that overlay codes may be implemented quickly, plans are often considered years in advance of number exhaust, leaving ample opportunity for splits to be implemented. NCTA at 4.

III. THE ONE-NXX CODE DISTRIBUTION REQUIREMENT SHOULD BE REVISED IN ORDER TO MITIGATE THE NONDISCRIMINATORY NATURE OF OVERLAY PLANS

The Commission determined that an all-services overlay plan could be implemented only if mandatory 10-digit dialing is in place and if each authorized telecommunications carrier is issued at least one NXX in the existing area code 90 days prior to introducing the overlay. However, the one-NXX requirement does not satisfy the Commission's stated intent to "reduce the potential anti-competitive effect of an area code overlay,"¹⁴ and thus, it should be revised.

A. The Issuance of One NXX Code Which Is Tied to A Single Rate Center Does Not Address the Anticompetitive Effects of Overlay Plans

TCG and others have shown that because of the current limitations on the use of an NXX assigned from one rate center, more NXX codes should be made available to CLECs in the event of overlay plans, and number conservation plans should be implemented so that NXXs already assigned may be used with the greatest efficiency.¹⁵ This condition, as adopted by the Commission, does not provide sufficient relief for CLECs from the anticompetitive effects of an overlay plan. CLEC customers, who will receive a disproportionate amount of numbers from the overlay code, will be required to dial 10-digits to reach most numbers, while ILEC customers will retain to a greater degree the same dialing patterns.

¹⁴ Second Report and Order at ¶ 288.

¹⁵ See, e.g., NCTA at 2-3 (finding that "in NPAs that contain multiple rate centers, a competitor's ability to obtain one NXX code in the old NPA is of limited practical utility, since "new entrants will be limited to assigning numbers in a single rate center in the 'desirable' NPA") (footnotes omitted).

This disparity will discourage customers from changing to CLEC carriers, which is particularly true when the incumbent LEC has numbers available from the existing NPA throughout the service area to meet customer demand for numbers and associated services. Therefore, a competitive carrier should have sufficient NXXs from the existing NPA to serve its entire service territory as a precondition to the implementation of an overlay plan. This is not an "extreme" position, as suggested by the Ohio PUC.¹⁶ It is the only means for complying with the statutory requirement for nondiscriminatory access to telephone numbers.¹⁷

The primary opposition to proposals for increasing the availability of NXXs for CLECs stems from a stated concern that the implementation of such a proposal will lead to quicker number exhaust.¹⁸ TCG agrees that with "competent planning," fears about number exhaust in NXX assignment are unfounded.¹⁹ Moreover, as Cox notes, number exhaust is only a danger in the event of "insufficient planning."²⁰ In any event, if there are not enough NXX codes to distribute one to each eligible carrier, then there will be no mitigation of the overlay plan's anticompetitive effects.²¹ Therefore, the NXX assignment requirement

¹⁶ See Ohio PUC at 4.

¹⁷ 47 U.S.C. § 251(b)(3).

¹⁸ See Ameritech at 6; Bell Atlantic at 4; GTE at 11-12

¹⁹ See AirTouch at 10.

²⁰ Cox at 2.

²¹ Id. at 3.

would not be triggered.

Similarly, USTA's claim that "the 90-day rule in its present form requires inefficient 'warehousing' of NXX codes on speculative grounds,"²² characterizes the irony of the ILEC position on this issue. It appears to be acceptable for ILECs to have the advantage of having warehoused numbers from the existing NPA, yet the numbering administration planning that would be required to provide CLECs with competitive opportunities in an overlay scenario is supposedly too difficult. If USTA's claim that "[a]ny customer inconvenience will be short-lived given that the new area code will soon become recognizable" is true,²³ then ILECs should have no objection to the assignment of any remaining NXX codes to the CLECs, while assigning NXXs from the overlay code will be assigned at the outset to the ILECs. However, the ILECs' uniform opposition to any such proposal belies USTA's claim and shows that the NXX condition must be revised.²⁴

²² USTA at 7; see also Bell Atlantic at 4 (stating that "[t]he only way to be sure in advance that this condition could be satisfied would be to set a large number of NXX's aside for as-yet-unauthorized carriers").

²³ USTA at n.23.

²⁴ See BellSouth at 2-3.

B. The One NXX Code Assignment Requirement Should Not Be Eliminated, Even If the Commission Declines to Reconsider This Condition

A number of ILECs have argued that the one-NXX assignment condition should be abandoned entirely because it will increase the rate of number exhaust once the overlay plan has adopted. However, this reasoning should be rejected on two grounds: (1) prior planning by the code administrator can prevent the forecasted "emergency" exhausts, and (2) if there are not enough NXXs available for to each eligible carrier, then a geographic split must be implemented instead. It is not the case that the number administrator has no relief options available other than an overlay plan.²⁵ Therefore, if the FCC declines to revise the requirement as TCG proposes, then it should be retained — even a single NXX, as inadequate as it might be, is better than none at all.²⁶

However, TCG recommends as a means of addressing both ILEC concerns with number exhaust and CLEC competitive concerns, that the Commission consider adopting a number conservation plan that would permit an NXX block to be spread across rate centers.²⁷ While U S West claims that the one NXX requirement "appears to be a variation of [TCG's number crunch proposal]

²⁵ See Part II, supra at 5-6.

²⁶ In its *Oppositions to Petitions for Reconsideration*, TCG supported revisions of the existing one-NXX requirement, but did not intend to suggest that in the absence of revisions that the requirement be eliminated. See TCG *Opposition and Comments* at 6-8, 12.

²⁷ See TCG *Opposition and Comments* at 7 (describing TCG's proposal).

advanced at the 11th hour,"²⁸ it is entirely proper for the Commission to deal with this proposal in this proceeding. If this overlay plan condition is implemented as currently formulated, then a number conservation proposal should soon be adopted so that one NXX block may be distributed across rate centers. Under this scenario, the NXX code assignment requirement should provide the relief from anticompetitive overlay features that was clearly intended by the Commission.

IV. THE COMMISSION SHOULD RETAIN THE MANDATORY 10-DIGIT DIALING REQUIREMENT IN THE EVENT OF AN OVERLAY PLAN

Many parties oppose the petitions by the Pennsylvania Public Utility Commission and the New York Department of Public Service to eliminate mandatory 10-digit dialing. As MCI notes, "[i]t would be patently unfair to new entrants if their customers have to dial 10 digits to place most calls, while ILEC customers could continue to place the vast majority of their calls using only 7 digits."²⁹ These petitions, if granted, would unfairly advantage ILECs and their customers and fail to recognize that the customers of new entrants would unfairly and uniquely be required to dial 10 digits to place most calls. Accordingly, these petitions should be rejected.

²⁸ U S West at 18.

²⁹ MCI at 3; see also AT&T at 15-16; Sprint at 8.

V. CODE ASSIGNMENT FEES SHOULD BE BASED ON THE COSTS THAT WOULD BE INCURRED BY A THIRD PARTY NEUTRAL ADMINISTRATOR

Parties have joined TCG in supporting AT&T's proposal for designating code assignment costs that may be recovered by the ILEC.³⁰ Other parties have proposed that number administration costs should be based on the retail revenues of a carrier,³¹ but these proposals should not be adopted if they do not require that carrier contributions must be based on the costs that would be incurred by a neutral number administrator. Under AT&T's proposal, the carrier contribution would be calculated based upon the forward-looking, economically efficient costs of numbering administration, thereby excluding those costs that are a cost of doing business as an interconnector (i.e., code opening).³² Pacific Telesis Group claims that AT&T's request "defies common sense and the clear import of the statute" because it is based on a third party's — the neutral number administrator's — costs;³³ however, AT&T has merely used the "neutral number administrator" as a standard by which to evaluate any code assignment fees assessed by the ILEC

³⁰ See AirTouch at 13; Personal Communications Industry Association at 8.

³¹ GTE at 15; U S West at 7.

³² TCG opposes U S West's suggestion that "[c]osts associated with opening a new CO code are properly assessed to the cost-causer -- the carrier seeking assignment of a new code." See U S West at 9 (footnote omitted). As TCG stated in its Opposition, code opening fees should be considered as part of the ILEC's cost of doing business and should not be passed on to the competitive carrier. See TCG Opposition at 10.

³³ Pacific Telesis Group at 5.

code administrator. AT&T's proposal is consistent with the statutory requirement of section 251(e)(2)

Therefore, the Commission should adopt AT&T's proposal that code assignment fees charged by an ILEC for NXX assignments must be limited to the forward-looking, economically efficient costs of numbering administration, to the extent that there are any. This standard would prevent ILECs from passing on to other carriers those costs of doing business that would not be incurred by a neutral numbering administrator.

VI. COMMENTERS UNIFORMLY AGREE THAT NONDISCRIMINATORY ACCESS MEANS ACCESS THAT IS AT LEAST EQUAL TO WHAT IS PROVIDED BY THE LEC TO ITSELF OR ITS AFFILIATES

Parties agree that the Commission should reject Ameritech's petition regarding the Commission's interpretation of nondiscriminatory access to telephone numbers, operator services, directory assistance and directory listings. Thus, the Commission should reject Ameritech's claim that it can provide nondiscriminatory access that is expressly not equal to that provided to itself or affiliates.³⁴ As AT&T observes, Ameritech's "tired claim that 'nondiscriminatory access' as used in Section 251(b)(3) contains some dark, hidden meaning -- permitting LECs to discriminate against other interconnecting service providers so long as the LEC

³⁴ The Telecommunications Resellers Association notes that the suggestion that "Congress intended to exempt the entities that control the most formidable barriers to competition from the obligation to provide others with access to critical elements that is at least equal in quality to that they provide themselves" is "nonsensical." Telecommunications Resellers Association at 14.

discriminates against all potential competitors equally."³⁵

Congress has recognized that equality of access and service will be necessary components of effective competitive in a deregulated environment.³⁶ This intent is reflected in sections 251(b) and (c), which are intended "to ensure that requesting carriers would have access to those bottleneck facilities and functions of the local exchange network that they will need in order to compete on even terms with incumbent LECs. It would be starkly inconsistent with its clear purpose to . . . [allow] a LEC to provide requesting carriers with some kind of inferior or restricted access to essential facilities as long as it treats all of its competitors equally unfairly."³⁷ Therefore, the Commission must reject Ameritech's petition so that new entrants may have access to telephone numbers, operator services, directory assistance and directory listings — services that customers understandably have come to expect from their local exchange service provider — on a nondiscriminatory basis, as compared to the service that the LEC provides to itself or its affiliates.

³⁵ AT&T at 12.

³⁶ See id. at 13 (stating that equality is part of the Congressional intent to establish a pro-competitive policy framework); MCI at 7 (stating that "[a]t a minimum, LECs should be required to treat competitor's calls with the same degree of care as it treats its own calls").

³⁷ MFS at 5; see also Sprint at 4 (opposing Ameritech's interpretation of nondiscriminatory access provisions).

VII. CONCLUSION

For the reasons stated above, the Commission should require that NPA overlays cannot be implemented in the absence of permanent number portability. In addition, the Commission should recognize that the assignment of one NXX from an existing area code does not address the anticompetitive effects of an overlay and should be revised so that CLECs have sufficient NXXs from the existing NPA to serve their entire service territory. If that requirement is not revised, then it should at least be retained in conjunction with the adoption of a code conservation plan so that the NXX from the existing area code could be spread across rate centers within a CLEC's service area. In addition, mandatory 10-digit dialing should be retained to address the anticompetitive effects of overlay plans.

The Commission should also adopt AT&T's proposal that ILECs be allowed to charge only the forward-looking economically efficient costs of code assignments. Finally, the Commission should affirm its finding that

nondiscriminatory access to telephone numbers, operator services, directory assistance and directory listings requires that ILECs provide such access to CLECs on terms that are identical to the access that the LEC provides itself or affiliates.

Respectfully submitted,

A handwritten signature in cursive script, reading "Teresa Marrero", is written over a horizontal line.

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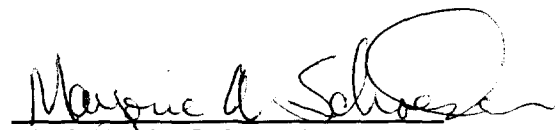
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